

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B05
PLR-131459-13
Date:
December 16, 2013

LEGEND:

Taxpayer =

Year 1 =

Property =

Tenant =

Dear :

This letter responds to a letter, dated July 10, 2013, and subsequent correspondence, submitted on behalf of Taxpayer, requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make the election under § 1.48-4 of the Income Tax Regulations for Year 1.

FACTS

According to the information submitted and representations made, Taxpayer is a limited liability company that owns the Property. Taxpayer rehabilitated the Property in a manner that qualified for the rehabilitation credit under § 47 of the Internal Revenue Code for qualified rehabilitation expenditures incurred in connection with the certified rehabilitation of a certified historic structure. The Property was placed in service in Year 1. Tenant is a limited liability company that leases the Property from Taxpayer.

Taxpayer and Tenant entered into a contract to pass through the rehabilitation credits relating to the Property to Tenant. The contract required Taxpayer to file an election under § 1.48-4(f). However, Taxpayer failed to timely file the election with its

tax return for Year 1. Taxpayer requests an extension of time to make the election for Year 1.

LAW AND ANALYSIS

Section 38(a) allows a credit for the taxable year in an amount equal to the sum of (1) the business credit carryforwards carried to the taxable year, (2) the amount of the current year business credit, plus (3) the business credit carrybacks carried to the taxable year.

Under § 38(b)(1), the amount of the current year business credit includes the investment credit under § 46. Under § 46(1), the investment credit includes the rehabilitation credit under § 47.

Section 47(a) provides that the rehabilitation credit for any taxable year is the sum of (1) 10 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and (2) 20 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

Section 1400N(h) provides a higher percentage for qualified rehabilitation expenditures paid or incurred from August 28, 2005, to December 31, 2011, with respect to any qualified rehabilitated building or certified historic structure located in the Gulf Opportunity Zone. Then the rehabilitation credit for any taxable year is the sum of (1) 13 percent of the qualified rehabilitation expenditures with respect to any qualified rehabilitated building other than a certified historic structure, and (2) 26 percent of the qualified rehabilitation expenditures with respect to any certified historic structure.

Under § 47(b)(1), qualified rehabilitation expenditures with respect to any qualified rehabilitated building shall be taken into account for the taxable year in which the qualified rehabilitated building is placed in service.

Section § 50(d)(5), makes applicable rules similar to the rules of former § 48(d) (relating to certain leased property). Under former § 48(d)(1), a person (other than a person referred to in former § 46(e)(1)) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new section 38 property (other than property described in former § 48(d)(4)) to treat the lessee as having acquired the property.

Section 1.48-4(a)(1) provides that a lessor of property may elect to treat the lessee of the property as having purchased the property for purposes of the credit allowed by § 38.

Section 1.48-4(a)(1)(iv) requires a statement of election to treat the lessee as a purchaser to be filed in the manner and within the time provided in § 1.48-4(f) or (g).

Section 1.48-4(f)(1) provides the information that must be included in the election statement. Under § 1.48-4(f)(2), the election statement must be filed with the lessee on or before the due date (including any extensions of time) of the lessee's return for the lessee's taxable year during which possession of the property is transferred to the lessee.

Section 301.9100-1(a) provides that an extension of time is available for elections that a taxpayer is otherwise available to make. However, the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election.

Section 301.9100-1(b) provides that the term "election" includes an application for relief in respect of tax and that the term "regulatory election" includes an election whose due date is prescribed by a regulation published in the Federal Register.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Sections 301.9100-2 and 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

A request for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence (including the affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith and that the grant of relief will not prejudice the interests of the government.

CONCLUSION

Based solely on the information submitted and representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer's election will be considered timely filed for purposes of § 1.48-4(f) if it is filed within 120 days of the date of this letter. A copy of this letter should be attached to Taxpayer's amended tax return for Year 1. A copy is enclosed for that purpose.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other

provisions of the Code. In particular, we express no opinion on whether Taxpayer's rehabilitation expenditures qualify for the rehabilitation credit under § 47, whether any of the limited liability companies involved in the transaction are partnerships for federal income tax purposes, whether any of the members of the limited liability companies are partners for federal income tax purposes, or whether the lease is disregarded for federal income tax purposes.

In accordance with § 301.9100-1(a), this ruling is not a determination regarding the economic substance of the transaction. Economic substance is a factual determination to be made during an examination by the appropriate Service officials.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, we are sending a copy of this letter to your authorized representative. Also, we are sending a copy of this letter to the appropriate SB/SE official.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Curt G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

By: _____
Nicole R. Cimino
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures:
Copy of this letter
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cc: